Ld

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.1409 OF 2006
IN
E.A. NO 306 of 2005
in
S.S. NO.1827 OF 2004

Ms. Pervana Dara Mistry... Plaintiff

vs

Manucher & anr .. Defendants

Mr.G.B.Kedia for Plaintiff
Mr.V.Z.Kankaria with Mr.A.J.Joshi for Plaintiff
Mr.Piyush Shah for Deft nos.1 & 2
Mr.C.Yadav for Intervenor

CORAM : SMT R.S.DALVI, J

DATE : 22nd January, 2007

P.C.

1. This Chamber Summons is taken out by the defendants in a suit for raising attachment levied of 31 acres of grass land in possession of the defendant no.2. This property bears Survey No.942 of village Mahim Taluka Palghar District Thane. The Chamber Summons is also for allowing the defendant no.2 to remove the grass and the wild plants from their land.

2. In the affidavit in support of the Chamber Summons, the defendant No. 2 stated that the property which belongs to the family members of defendant no. 2 came to be earmarked and 31 acres

thereof came to be in possession of his wife. He relied upon 7/12 Extract. The land was vacant and he desired to cut the grass. No interim order to such an extent is passed. However, the affidavit in support shows the admitted possession of the defendant no.2 to the land attached.

3. The attachment was initially made before judgment in the suit by the plaintiff. Initial attachment order is 2nd April, 2005. A decree thereafter came to be passed on 3rd August, 2005 and attachment came to be continued in execution.

4. This Chamber Summons has been taken out on 28th October, 2005.

5. The decree is not satisfied. The attrachment has continued in execution. No case is made out for raising the attachment.

6. These 4 Chamber Summons i.e.44/06,45/06,46/06,47/06 are taken out by the sisters and brothers of defendant no.2.claiming that the property which has been attached has been co-owned by them.

7. The property is open land. The respondents has relied upon the revenue records in respect of the

entire land. The defendant no. 2 in his Chamber Summons being Chamber Summons No.1409 of 2005 has admitted that his wife owns only 31 acres out of total 169 acres of the land co-owned by the family members. The plaintiff desires to sell only 31 acres of the attached land. 31 acres are to be demarcated from the entire land. The plaintiff does not desire to attach or sell any other portion of the respondent's land. It is admitted that the defendant no.2 is one of the family member. Hence, defendant no.2 also has right title and interest to her undivided share. That share once demarcated can be sold in execution of the decree obtained by the plaintiff.

8. It is therefore, clarified in Chamber Summons that the plaintiff shall demarcate and sell only 31 acres of the entire vacant land. Since no attachment to any greater extent is levied, their need be no order for raising any attachment. Hence, there shall be no other order on the Chamber Summons.

9. No order as to costs.

(Smt R.S.Dalvi,J)